

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CASE NO. 3:25-cv-05333-DGE

TONG HE

,

Plaintiff(s),

v.

KRISTI NOEM, Secretary of the  
Department of Homeland Security;

TODD LYONS, Acting Director of  
Immigration and Customs Enforcement; ,

Defendant(s).

Tong He 6113 9th St NE Tacoma WA 98422, Phone: 4082013045

Plaintiff Tong He, appearing pro se

1                   Plaintiff's Brief in Support of Motion for Preliminary Injunction

2           Plaintiff Tong He, a pro se F-1 international student, respectfully moves this Court for a  
3 preliminary injunction to restore his Student and Exchange Visitor Information System (SEVIS)  
4 record to active F-1 status and enjoin Defendants—U.S. Department of Homeland Security (DHS)  
5 and U.S. Immigration and Customs Enforcement (ICE)—from enforcing the unlawful termination  
6 of his SEVIS record or taking adverse actions, such as detention or removal, pending resolution of  
7 this case. This motion is supported by violations of the Administrative Procedure Act (APA), Fifth  
8 Amendment due process and equal protection, and the irreparable harm Plaintiff faces, as  
9 recognized by this Court's granting of a Temporary Restraining Order (TRO) on April 24, 2025,  
10 and further outlined in the Amended Order Granting Motion for Temporary Restraining Order,  
11 dated April 25, 2025. Pursuant to the Court's Amended Order, which sets the briefing schedule for  
12 the preliminary injunction hearing on May 7, 2025, Plaintiff files this opening brief in support of  
13 his Motion for Preliminary Injunction. The preliminary injunction is necessary to prevent ongoing  
14 irreparable harm and maintain the status quo beyond the TRO's expiration on May 9, 2025, while  
15 this case proceeds to a final determination.

16                                   Statement of Facts

17           Plaintiff is a master's degree student at Trine University, maintaining a 3.929 GPA and full  
18 compliance with F-1 visa requirements since August 2023. On April 9, 2025, Defendants  
19 terminated Plaintiff's SEVIS record without notice, explanation, or opportunity to respond. This  
20 termination violates DHS regulations (8 C.F.R. § 214.1(d)) and ICE Policy Guidance 1004-04,  
21 which prohibit SEVIS termination based solely on visa revocation. As a result, Plaintiff faces  
22 immediate and ongoing harms:

23           Unlawful Presence: Daily accrual under 8 U.S.C. § 1182(a)(9)(B), risking 3/10-year reentry  
24 bars.

25           Detention Risk: Potential ICE apprehension or removal as an out-of-status individual.

26 Academic Disruption: Inability to complete his degree, loss of credits, and revocation of  
27 Curricular Practical Training (CPT) employment.

28 Emotional Distress: Significant stress and reputational harm. These facts are detailed in  
29 Plaintiff's Declaration and supported by the Complaint.

#### 30 Legal Standard

31 A preliminary injunction requires Plaintiff to show: (1) likelihood of success on the merits;  
32 (2) irreparable harm absent relief; (3) balance of equities favoring Plaintiff; and (4) public interest  
33 supporting the injunction (Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20  
34 (2008)). Alternatively, in the Ninth Circuit, relief may be granted if Plaintiff raises "serious  
35 questions going to the merits" and the balance of hardships tips sharply in his favor, provided  
36 other factors are met (Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir.  
37 2011)).

#### 38 Argument

##### 39 A. Likelihood of Success on the Merits

40 Plaintiff is likely to succeed on his claims under the APA, Fifth Amendment due process,  
41 and equal protection, bolstered by judicial findings and the defendants' failure to assure non-  
42 recurrence of unlawful conduct.

43 APA Violations. The SEVIS termination was arbitrary, capricious, and contrary to law  
44 under 5 U.S.C. § 706(2)(A). DHS regulations (8 C.F.R. § 214.1(d)) limit SEVIS terminations to  
45 specific grounds, none of which apply to Plaintiff, who has no convictions and maintains  
46 academic compliance. ICE Policy Guidance 1004-04 explicitly prohibits termination based solely  
47 on visa revocation, yet Defendants cited "visa revoked" as the basis. Recent cases, including Jin v.  
48 Noem (D.S.D. Apr. 10, 2025), Chen v. Noem (D.S.D. Apr. 11, 2025), and Liu v. Noem (D.N.H.

49 Apr. 7, 2025), have found similar terminations unlawful, reinforcing Plaintiff's  
50 position. Compelling evidence demonstrates that SEVIS termination results in the loss of valid  
51 F-1 nonimmigrant status. In Xiaotian Liu v. Noem (Case No. 1:25-cv-00133-SE-TSM), a USCIS  
52 document dated April 19, 2025, explicitly states that SEVIS termination ends lawful  
53 nonimmigrant status. This interpretation by USCIS, a DHS component, confirms the severe legal  
54 consequences of Defendants' actions. This Court's Order Granting Motion for Temporary  
55 Restraining Order (Dkt. No. 2), dated April 24, 2025, further supports this, noting that SEVIS  
56 termination results in the loss of employment authorization and prevents schools from reporting  
57 compliance, rendering students out-of-status (order at 15). These findings, combined with  
58 USCIS's stance, establish that the termination was inconsistent with agency practices and  
59 arbitrary, significantly strengthening Plaintiff's APA claim. Moreover, the voluntary cessation  
60 doctrine precludes Defendants from arguing that the case is moot, even if they temporarily restore  
61 Plaintiff's SEVIS record. Under *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*,  
62 528 U.S. 167, 189 (2000), Defendants bear the "heavy burden" of proving that the wrongful  
63 behavior "could not reasonably be expected to recur." In *John Doe v. Kristi Noem, et al.* (No.  
64 2:25-cv-00633-DGE), the plaintiff highlighted Defendants' failure to meet this burden, noting that  
65 the April 2025 mass-terminations were based on an unwritten, evolving policy, and ICE retains  
66 authority to terminate SEVIS records "for other reasons" at any time. The absence of a formal  
67 policy change and Defendants' history of reinstating records only under court pressure (e.g., post-  
68 TRO on April 17, 2025, in *Doe v. Noem*) suggest a high likelihood of recurrence, necessitating  
69 injunctive relief to protect Plaintiff.

70 Due Process Violation. Plaintiff's F-1 status constitutes a protected liberty and property  
71 interest (*Landon v. Plasencia*, 459 U.S. 21, 32-34 (1982)). The termination without notice or  
72 opportunity to respond violates Fifth Amendment due process (*Mathews v. Eldridge*, 424 U.S.

319, 333 (1976)). Courts in *Jin, Chen, and S.Y. v. Noem* (D.S.D. Apr. 12, 2025) upheld this argument, finding that abrupt SEVIS terminations without process are unconstitutional. The lack of procedural safeguards in Plaintiff's case mirrors these precedents, enhancing his likelihood of success.

Equal Protection Violation. Defendants' pattern of targeting Chinese F-1 students suggests discriminatory enforcement, violating the Fifth Amendment's Equal Protection Clause (*Bolling v. Sharpe*, 347 U.S. 497, 499 (1954)). *Chen v. Noem* raised similar concerns, noting selective enforcement against specific nationalities. This discriminatory pattern raises serious questions sufficient for relief under the Ninth Circuit's alternative standard (*Alliance for the Wild Rockies*, 632 F.3d at 1134-35).

#### B. Irreparable Harm

Plaintiff faces immediate and irreparable harm absent a preliminary injunction, as the SEVIS termination inflicts ongoing damages that cannot be remedied by monetary compensation. The following harms underscore the urgency of the May 7, 2025, hearing.

Accrual of Unlawful Presence. Since April 9, 2025, Plaintiff has been accruing unlawful presence under 8 U.S.C. § 1182(a)(9)(B), risking 3- or 10-year reentry bars. This permanent stain on his immigration record cannot be undone, constituting irreparable harm (*Chen v. Noem*, D.S.D. Apr. 11, 2025; *Roe and Doe v. Noem*, D.S.D. Apr. 10, 2025). Plaintiff's Declaration details his discovery of the termination via a consular email, with no administrative recourse, amplifying the harm's severity. This Court's TRO Order (Dkt. No. 2) recognized unlawful presence as a direct consequence of SEVIS termination, justifying immediate relief.

Risk of Detention or Removal. As an out-of-status individual, Plaintiff faces imminent risk of ICE apprehension, detention, or removal. This threat to liberty is a fundamental irreparable

97 harm (Jin v. Noem, D.S.D. Apr. 10, 2025; Liu v. Noem, D.N.H. Apr. 7, 2025). In S.Y. v. Noem  
98 (D.S.D. Apr. 12, 2025), the court granted a TRO based on similar risks, a precedent this Court  
99 echoed in its TRO Order (Dkt. No. 2), emphasizing the need to shield Plaintiff from enforcement  
100 actions.

101 Academic and Professional Disruption. The SEVIS termination has revoked Plaintiff's  
102 CPT employment and barred class registration at Trine University, jeopardizing his master's  
103 degree completion. Educational and professional disruptions are well-established irreparable  
104 harms for international students (Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir.  
105 2014)). Plaintiff's Declaration documents these impacts, and the TRO Order (Dkt. No.  
106 2) acknowledged their severity, warranting injunctive relief.

107 Emotional and Reputational Harm. The abrupt termination has caused Plaintiff significant  
108 emotional distress and reputational damage, stigmatizing him as out-of-status despite his  
109 exemplary record. In the immigration context, such harms are recognized as irreparable (Liu v.  
110 Noem). The TRO Order (Dkt. No. 2) noted the broader impact of termination, supporting the need  
111 for relief to mitigate these effects.

#### 112 C. Balance of Equities

113 The balance of equities sharply favors Plaintiff. The catastrophic harms—loss of legal  
114 status, education, employment, and risk of deportation—far outweigh the minimal administrative  
115 burden on Defendants to restore Plaintiff's SEVIS record. Courts in Jin, Chen, and S.Y. v. Noem  
116 consistently found this balance favors plaintiffs. In Doe v. Noem, the plaintiff argued that  
117 preserving the status quo imposes no material burden on Defendants, while failure to act risks  
118 Plaintiff's academic and professional future and investments in education. Defendants'  
119 history of disregarding regulations (Doe v. Noem, citing mass visa cancellations and warrantless  
120 arrests) suggests that without an injunction, the risk of re-termination remains high (United States

121 v. Concentrated Phosphate Export Ass'n, Inc., 393 U.S. 199, 203 (1968)).

122 D. Public Interest

123 Granting the injunction serves the public interest by ensuring agency compliance with the  
124 APA and constitutional protections, safeguarding the integrity of the F-1 program, and supporting  
125 U.S. universities and the economy (Liu v. Noem). The public also benefits from procedural  
126 regularity and the protection of federally funded research, as highlighted in Doe v. Noem. Judicial  
127 trends, as reported by the New York Times, indicate skepticism about the lawfulness of abrupt  
128 SEVIS terminations, reinforcing the public's stake in upholding lawful processes (U.S. Restores  
129 Legal Status for Many International Students).

130 E. Scope and Necessity of the Preliminary Injunction

131 The preliminary injunction must encompass the TRO's relief (dated April 24, 2025,  
132 amended April 25, 2025) to prevent a lapse in protection upon the TRO's expiration on May 9,  
133 2025. The Court should order:

134 Restoration of Plaintiff's SEVIS record to active F-1 status, absent lawful termination  
135 under 8 C.F.R. §§ 214.1(d), 214.2(f).

136 Enjoinment of Defendants from enforcing the unlawful SEVIS termination.

137 Prohibition of adverse actions, such as detention or removal, pending case resolution.

138 Waiver of any bond requirement, as the relief imposes no material burden on Defendants  
139 but is critical to Plaintiff (Doe v. Noem).

140 Necessity of the Preliminary Injunction Hearing. The May 7, 2025, hearing is  
141 indispensable to address the ongoing risk of re-termination, particularly given Defendants'  
142 potential mootness argument, as raised by attorney Whitney Passmore in Doe v. Noem (No. 2:25-  
143 cv-00633-DGE). Passmore's opposition in that case claimed the issue was moot due to temporary  
144 SEVIS restoration, but the plaintiff countered that Defendants' unwritten, evolving policy and lack

145 of formal reversal leave students vulnerable. Plaintiff anticipates a similar defense here,  
146 necessitating the hearing to evaluate Defendants' assurances against their history of arbitrary  
147 actions. The voluntary cessation doctrine (*Friends of the Earth*, 528 U.S. at 189) requires  
148 Defendants to prove non-recurrence, a burden they have not met, as evidenced by their equivocal  
149 statements and retention of termination authority (*Doe v. Noem*). Without the hearing, Plaintiff  
150 risks re-termination, which would strip his lawful status, halt his education, and expose him to  
151 enforcement actions. The hearing is critical to assess collateral consequences, such as barriers to  
152 future immigration benefits, which persist even if SEVIS is temporarily restored (*MedImmune*,  
153 *Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)). The Amended Order's scheduling of the  
154 hearing underscores its urgency, and Plaintiff's compliance with evidence requirements (Exhibit  
155 A) strengthens the case for relief.

156       Importance of Extending TRO in Related Cases. The necessity of extending interim relief  
157 is vividly illustrated in *Rattanand Ratsantiboon v. Kristi Noem, et al.* (No. 0:25-cv-01315-JMB-  
158 JFD) and *Ziliang Jin v. Kristi Noem, et al.* (No. 0:25-cv-01391-JMB-JFD), where Judge Jeffrey  
159 M. Bryan extended the TRO for 14 days in each case. In *Rattanand Ratsantiboon* (No. 0:25-cv-  
160 01315-JMB-JFD), the court extended the TRO on April 29, 2025, citing uncertainties surrounding  
161 ICE's new policy on SEVIS terminations, the unclear effects of this policy shift on plaintiffs with  
162 reinstated SEVIS records, and the potential impact on the plaintiff's ability to register for courses.  
163 The court required Defendants to maintain the plaintiff's SEVIS authorization as active retroactive  
164 to March 28, 2025, and prohibited further termination actions, with briefing ordered by May 8,  
165 2025, to assess further extension needs. Similarly, in *Ziliang Jin* (No. 0:25-cv-01391-JMB-JFD),  
166 the court extended the TRO for 14 days on April 29, 2025, for identical reasons, ensuring the  
167 plaintiff's SEVIS record remained active retroactive to April 8, 2025, and enjoining adverse  
168 actions. These extensions underscore the critical need for continued protection amid evolving



169 immigration policies, preventing abrupt disruptions to students' legal status and academic  
170 progress. The courts' actions in these cases highlight the risk of harm without extended interim  
171 relief, reinforcing the urgency of Plaintiff's preliminary injunction to bridge the gap beyond the  
172 TRO's expiration.

173 Conclusion

174 The Court should grant a preliminary injunction to restore Plaintiff's SEVIS record,  
175 enjoin enforcement of the unlawful termination, and prohibit adverse actions pending case  
176 resolution. The May 7, 2025, hearing is essential to counter Defendants' likely mootness defense,  
177 as raised by Whitney Passmore in Doe v. Noem, and to ensure Plaintiff's protection beyond the  
178 TRO's expiration. Plaintiff's strong likelihood of success, irreparable harms, and the public  
179 interest in lawful governance justify this relief, consistent with this Court's prior findings and  
180 recent judicial trends in cases like Rattanand Ratsantiboon and Ziliang Jin.

Dated: May 1, 2025

Respectfully submitted,

  
/s/

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